NOTES OF CASES.

Alimony—Husband Marrying Again.—In Nebraska, where a decree of divorce and for the payment of alimony is granted the wife, the derelict husband cannot defeat the collection of alimony by remarrying, and claiming the benefit of the exemption law, as the head of a family.

The Supreme Court said that the law ought not to permit him to construct a shield that will protect him in his marital and domestic recklessness. By getting married again he ought not to be permitted to relieve himself from the burden of support. "The branch of jurisprudence which treats of marriage is most important. Marriage furnishes the basis of a permanent and Christian civilization. The duties assumed under it should be conscientiously discharged. Courts of equity will compel the enforcement of marriage obligations, and no mere rule of law sought to be interposed by him will permit the derelict husband to escape the burden of supporting his wife and children." The Court held that the object of the statute relating to exemptions was the protection of the family and not the protection of the husband. "It could never have been designed to allow a man to escape his obligations to his family. Why, then, should it not protect the family against him, as well as protect it against a creditor?" Winter *v.* Winter, 145 N. W. 709.

Suit Case Falling from Rack on Head of Passenger.—In Connecticut the plaintiff with two friends was playing cards in the smoking car of a train, when it suddenly stopped a short distance before reaching a station, and a suit case fell from the rack over the seat in which the plaintiff was then sitting and struck him on the head, inflicting an injury from which serious consequences afterwards developed. The plaintiff's friends had placed two suit cases in the rack, one over the other, before the train started from New York. The plaintiff sued for damages claiming that the suit case was thrown from the rack by a train stop so unusually sudden and violent as to show negligence in the operation of the train; or if the stopping of the train was not unusual, and the fall of the suit case was occasioned in whole or in part by the ordinary motion of the train, defendant ought to have foreseen the danger and protected plaintiff against it. The trial court found against him, but its decision is overruled on appeal, the Supreme Court saying: "A passenger cannot be expected to know the cause of an abrupt stop resulting in injury, and it is not asking too much of the defendant railroad that it should be put upon its explanation by evidence showing that the stop was uncommonly abrupt, and that it produced a physical consequence in itself unusual, from which the plaintiff's injury resulted. * * * It is said that the doctrine of res ipsa loquitur has no

application to this case, because the suit case which caused the injury was not under the control of the defendant. But we are not inclined to follow the suggestion contained in some of the New York cases; that the railroad company is bound to exercise only a reasonable degree of care in protecting its passengers from the risk of luggage falling from racks provided for its stowage. The furnishing of racks for that purpose invites passengers to use them to the extent of their apparent limit of safety, and imposes on the railroad, when the racks are so used, the duty of operating its trains so as not to endanger passengers sitting in the seats underneath such racks. If the defendant maintained racks of such construction that there was a risk not apparent to the ordinary passenger in putting one suit case on top of another, it should have given notice that it was dangerous to do so, either before the train started, or at some time during the hour and a half after the train started and before the accident happened. If any evidence had been offered from which the jury could reasonably have found that the rack in question could not safely hold two dress suit cases, one on top of the other, we think the jury would also have been justified in finding that the defendant was negligent in giving no warning of that fact, for it is clear that a passenger sitting in a seat provided for that purpose is not bound to maintain a lookout to protect himself against the danger of falling luggage, unless perhaps the danger is so obvious that it ought to attract the attention of any ordinary observant person. But the evidence as offered pointed the other way, and indicated that the suit case in question was securely stowed in the rack before the train started, and there was no evidence that it was in fact dislodged, or was liable to be dislodged, by the ordinary motion of the train. Under this condition of the testimony the jury might resonably have found that the proximate cause of the accident was the unusually abrupt train stop; and this, as already stated, is a cause peculiarly under the control of the defendant's servants." Rosenthal *v.* R. Co., 89 Atl. 888.

Peddling and Interstate Commerce.—When the judges of an appellate court are equally divided in opinion as to the disposition to be made of a case, the judgment of the court below will be affirmed. Such a judgment of affirmance is, of course, binding on the parties to the particular litigation; but the decision is not regarded as settling the question of law involved so that it may be cited or relied on as a precedent. An interesting illustration of this doctrine is found in J. G. Davis *v.* Commonwealth of Virginia, 35 Supreme Court Reporter, 479, the court in effect reversing itself on the proposition of law established in Roselle *v.* Commonwealth, 32 Supreme Court, 522. Roselle was convicted of peddling without a license. He maintained that the conviction if upheld would constitute an unlawful in-